



EEO and Diversity Program
EEO and Diversity: Collaborating for Mission Success

Solutions to Workplace Conflict: What Mediation Can Do for You!

FREQUENTLY ASKED QUESTIONS ABOUT MEDIATION

On October 27, 2006, the EEO and Diversity Program sponsored a panel presentation on the mediation program for all Service Center complex employees. Also, a session was held for the Service Center Leadership Team on November 15, 2006. At the end of the panel presentations, audience members were able to ask questions about the mediation program. If you would like to review the DVD of the presentation, contact the EEO and Diversity Program Office at (505) 845-5517 or by email at EEODiversityOffice@doeal.gov

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What kinds of issues can be mediated?

EEO issues; communication problems at work; other workplace issues have to be resolved and are not; when issues are complex and individual parties have an interest in maintaining confidentiality with respect to key issues; and when parties want or need to maintain an ongoing working relationship. [Back to Top](#)

How does one prepare for mediation?

The program does not work if participants don't come to the table in good faith. Know what your issues are and have some idea of what it will take to resolve them to move forward. [Back to Top](#)

Benefit of choosing mediation to resolve a potential EEO complaint?

Mediation can be a much more rapid process. The Equal Employment Opportunity process begins with a 30 day period for pre-complaint counseling. This pre-complaint counseling can be extended, if agreed to, by an additional 30 days, making a total of 60 days. If the complaint is not resolved in pre-complaint counseling and a formal complaint is filed, the process allows 180 days for the agency to conduct an investigation into a complaint. Additionally, once the 180 days is completed, another 60 days is allowed to issue a decision. Once the decision is issued, it can be appealed by either party which adds more time. [Back to Top](#)

What is the difference between arbitration and mediation?

The arbitrator is essentially the judge and will make a decision based upon information provided in arbitration. The decision is binding.

A Mediator makes no conclusion or decision. During the process, the mediator will use caucus to work with both sides to work together to attempt to resolve the conflict. Participation in mediation is voluntary. Finally, a mediation session does not always result in a decision. [Back to Top](#)

What happens internally with NNSA, anonymity?

When parties come to mediation, participants sign confidentiality statements: they agree not to go out and talk about what happened in the mediation. The reality is you cannot control that some individuals will breach the confidentiality statement. For the most part, participants do maintain confidentiality. [Back to Top](#)

What about a representative for the participants?

Occasionally you will have someone who wants a representative and you can have one. You must state your intent to have a representative so that the other participant can determine if they too want a representative or wish to withdraw from the mediation.

The representative is only an observer; they are not an active participant. They can take notes, however, we usually ask at the end of the session that notes are destroyed in the presence of all parties. This is because mediation is informal and there are no rules of evidence. Participants like the added feature of what is said in the session stays in the session. The only record if you will, of the session is a settlement agreement, if reached.

Representatives also sign the confidentiality agreement prior to the start of the mediation session. [Back to Top](#)

If a representative is an attorney isn't there attorney-client privilege?

Most attorneys are very aware of the mediation process and understand coming in as a representative that the mediation session/process is intended to resolve a dispute at an informal level, and therefore is not a formal process protected by attorney-client privilege. [Back to Top](#)

What do settlement agreements include?

Settlement agreements cannot include provisions that violate any existing policy and procedures. They are reviewed by Human Capital Management and the Office of Chief Counsel to ensure legality, prior to signatures. If the mediation was in lieu of the EEO pre-complaints process, the EEO Office will also review. Any staff members that review the agreements for consistency with agency policies and procedures are also bound by the sensitivity of the document. [Back to Top](#)

Are Settlement Agreements really enforced?

The agreements include dates and items that will have to occur. If they don't occur, contact the person who signed for the decision and try to find out why. At times it could be the absence of someone needed to implement the decision or other reason. First and foremost communicate to try and find out.

Prior to the actual mediation, the parties are asked by the mediator to ensure they have the authority to sign a settlement agreement. When the parties come up with a settlement agreement, because they drafted the agreement, there is close to 100% enforcement.

If an employee feels there is a breach, you can pursue an administrative grievance within a specified timeframe; or if the conflict was a potential EEO, resume the EEO process within a specified timeframe.

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How long does the average mediation session take?

Approximately six (6) hours per mediation is planned for by the mediators. This includes up to one (1) hour spent meeting separately with each party seeking your issues and desired resolutions. Then the actual session where the parties meet with the mediator will be scheduled for up to four (4) hours. The average is around three (3) hours for the actual mediation session.

The mediators work hard to help the participants toward resolution in one session. Occasionally, a second session will be needed. [Back to Top](#)

If mediation doesn't work can I continue with my grievance?

Yes, there is a provision for resuming an administrative grievance at the point you elected mediation. See the DOE order on the grievance process. [Back to Top](#)

If I elect mediation during pre-complaint EEO counseling and mediation doesn't work can I continue pursuing an EEO Complaint?

Yes, the Equal Employment Opportunity Commission (EEOC) mandates that all agency's offer alternative dispute resolution to help resolve complaints, however participation is voluntary. Further, at any time during informal or formal processing of an EEO complaint, the parties can enter into mediation. Once you enter mediation, the clock stops on the complaint processing for up to 90 days for mediation. If mediation is unsuccessful, you may resume processing of your EEO complaint.

Additionally, if a complaint gets to EEOC, EEOC is directing the parties to mediate if they haven't done so at any earlier point in the processing. [Back to Top](#)

How are mediations tracked?

Every month a report is sent to EEO on the number of mediations conducted and the status. There are no specifics as to names, locations, or issues. The report is strictly numbers conducted, resolved, pending, or concluded without resolve. [Back to Top](#)

Isn't mediation really compromise which is somewhat lose-lose?

No, it is the opportunity to hear the others' perspective on the situation, hear what it will take to resolve the issue from them, and share your own perspective. From the sharing of the two perspectives, participants often find that what they wanted for resolution is workable to the satisfaction to the other participant. [Back to Top](#)

What if the dispute is between a contract employee and a federal employee?

On a case-by-case basis the current program can provide funding for mediation between a contract employee and a federal employee: Contact the Mediation Program coordinator, Debbie Allison at (505) 845-6021.

The Ombuds Program is also a dispute resolution process for conflict involving contract employees and federal employees. For more information, contact the [NNSA Ombuds program](#). [Back to Top](#)

What is the difference between Mediation and Ombuds?

Ombuds is a facilitation process and clearing process, separate from the NNSA mediation program. If the Ombuds gets information that is clearly EEO for example, they will refer the employee to EEO.

Additionally, the Ombuds is an internal employee. Mediators are outside professionals trained in mediation and conflict resolution. [Back to Top](#)



Have your own question about mediation? Contact Debbie Allison, the Mediation Program Coordinator at (505) 845-6021 or dallison@doeal.gov or send your question to EEODiversityOffice@doeal.gov